

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts


The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, and 7.42 relating to Rail Safety and §7.105 relating to Railroad Grade Crossings to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A, B, and C are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

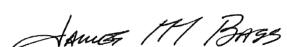
IT IS THEREFORE ORDERED by the commission that the amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, 7.42 and 7.105 are adopted and are authorized for filing with the Office of Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

DocuSigned by:

74DF5E4E914849F...
Director, Rail Division

Recommended by:

DocuSigned by:

A36629BA547D4BD...
Executive Director

115745 May 28 2020

Minute Number	Date Passed
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Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, and 7.42 concerning Rail Safety and §7.105 concerning Railroad Grade Crossings. The amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, 7.42 and 7.105 are adopted without changes to the proposed text as published in the December 27, 2019 issue of the *Texas Register* (45 TexReg 8218) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department has transferred the Rail Safety program from the Traffic Safety Division, formerly known as Traffic Operations Division, to the Rail Division. The amendments to §§7.30, Definitions, 7.32, Filing Requirements, 7.33, Reports of Accidents/Incidents, 7.34, Hazardous Materials - Telephonic Reports of Incidents, 7.38, Wayside Detector Map, List, or Chart, and 7.42, Administrative Review, are needed to change the responsible division in the rules from the Traffic Safety Division to the Rail Division.

Amendments to §§7.33 and 7.34, also delete the telephone number used for giving telephonic notice and refer to the telephone number posted on the department's website. This change allows for greater ease in locating the proper number.

Amendments to §7.105, Spur Tracks Crossing Existing Highways, delete the term "spur" from the phrase "spur tracks" so that the

rule applies to all railroad tracks that cross a highway or road. This change is made to conform the text of the rule with actual practice. "Spur" is not a defined term, and §7.105 has been applied to all railroad crossings. A change is also made to §7.105 to state that the person requesting the crossing is responsible for all initial construction costs, but not necessarily all future costs as implied by the current rule. The initial construction costs include active warning devices considered appropriate by the department to assure the crossing meets applicable safety requirements. The regulation does not address future costs, as such costs are handled under applicable state and federal law.

COMMENTS

No comments on the proposed amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, 7.42, and 7.105 were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal rail safety laws, Transportation Code, §193.001, which relates to the safe packing or transportation of hazardous materials, and Transportation Code, §471.004, which requires the department to adopt rules governing the

1 installation and maintenance of reflecting material at grade
2 crossings.

3

4 CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING
5 Transportation Code, Chapters 111, 193, and 471.

SUBCHAPTER D. RAIL SAFETY

§7.30. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Transportation.

(2) Division director--The director of the department's Rail [~~Traffic Operations~~] Division.

(3) FRA--The Federal Railroad Administration.

(4) Railroad--Any form of nonhighway ground transportation that runs on rails or electromagnetic guideways.

(A) Railroad includes:

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads.

(B) Railroad does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

§7.32. Filing Requirements.

(a) A railroad shall file with the department:

(1) the name, address, and telephone number of the principal operating officer in Texas;

NOTE: Additions underlined

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Exhibit B

1 (2) a primary and secondary telephone number, which
2 are manned 24 hours per day, for the railroad dispatcher or
3 supervisor responsible for train operations in Texas.

4 (b) When the department makes a written request, a railroad
5 shall file with the department:

6 (1) its code of operating rules, timetables, and
7 timetable special instructions as follows:

8 (A) the operating rules, timetables, and
9 timetable special instructions; and

10 (B) each amendment to the railroad's code of
11 operating rules, each new timetable, and each new timetable
12 special instruction;

13 (2) a copy of monthly reports of excess service filed
14 with the FRA under 49 C.F.R. §228.19;

15 (3) a copy of its program for periodic conduct of
16 operational tests and inspections filed with the FRA under 49
17 C.F.R. §217.9;

18 (4) a copy of its program for periodic instruction of
19 its employees filed with the FRA under 49 C.F.R. §217.11; and

20 (5) a copy of its program for engineer certification
21 filed with the FRA under 49 C.F.R. Part 240.

22 (c) Filings required by subsection (b)(1)-(5) of this
23 section may include only information pertaining to railroad
24 operations conducted in the state of Texas.

25 (d) It is preferred that filings required by this
26 subsection be made using electronic digital media format.

(e) Filings required by this section shall be submitted to:
Rail [~~Traffic Operations~~] Division, Texas Department of
Transportation, 125 East 11th Street, Austin, Texas 78701.

§7.33. Reports of Accidents/Incidents.

(a) Telephonic reports of certain accidents/incidents.

(1) A railroad shall give immediate telephonic notice
to the department of accidents/incidents and other events by
calling the department's Rail [~~Traffic Operations~~] Division at
the telephone number posted on the department's website [~~(+844)~~
~~292-0980~~]. Except as provided in paragraph (2) of this
subsection, a railroad shall give reports to the department in
the same manner and following the same requirements as the
railroad shall give reports to the National Response Center
under 49 C.F.R. §225.9.

(2) In addition to giving the department telephonic
notice of the accidents/incidents and other events described in
49 C.F.R. §225.9, a railroad shall give telephonic notice of
accidents/incidents which:

- (A) result in the death of one or more persons;
- (B) result in the injury of two or more persons;
- (C) involve a fire or explosion; or
- (D) involve a passenger or commuter train.

(b) Written reports. When the department makes a written
request, a railroad shall furnish the department with a copy of
an accident/incident report filed with the FRA under 49 C.F.R.

Part 225, within 30 days after expiration of the month during which the accident/incident occurred. Only copies of reports that concern accidents/incidents occurring in the state of Texas shall be filed with the department. It is preferred that filings required by this section be made by electronic digital media format.

§7.34. Hazardous Materials - Telephonic Reports of Incidents.

A railroad shall give immediate telephonic notice to the department of hazardous materials incidents by calling the department's Rail [~~Traffic Operations~~] Division at the telephone number posted on the department's website[~~(844) 292-0980~~]. A railroad shall give reports to the department in the same manner and following the same requirements as the railroad shall give reports to the National Response Center under 49 C.F.R. §171.15. A railroad shall give telephonic notice of only those accidents/incidents which involve the operation of railroad on-track equipment (standing or moving).

§7.38. Wayside Detector Map, List, or Chart.

(a) When the department requests in writing, a railroad shall file a map, list, or chart with the department indicating the current locations within the state of Texas of the following wayside detectors:

(1) hot box indicators;

(2) dragging equipment detectors;

NOTE: Additions underlined

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Exhibit B

- (3) high water indicators;
- (4) shifted load detectors; and
- (5) other wayside detectors.

(b) Filings required by this section shall be submitted to:
Rail [~~Traffic Operations~~] Division, Texas Department of
Transportation, 125 East 11th Street, Austin, Texas 78701.

§7.42. Administrative Review.

(a) Applicability. This section applies only when another
section makes a specific reference to this section.

(b) Application.

(1) A railroad shall submit an application for
administrative review to the following address: Director, Rail
[~~Traffic Operations~~] Division, Texas Department of
Transportation, 125 East 11th Street, Austin, Texas 78701.

(2) The application shall explain the relief
requested, all relevant facts, and the legal basis for the
relief sought.

(3) If the application seeks review of a department
decision given to the railroad in writing, the railroad shall
submit an application for review no later than 30 days after
receipt of the written decision.

(c) Decision. The executive director, or his designee not
below division director, shall decide whether to grant, grant in
part, or deny the application. If an applicant does not provide
information sufficient to evaluate the application, the

1 application shall be denied. The applicant is not entitled to a
2 contested case hearing, and there is no right to appeal the
3 decision.

SUBCHAPTER F. RAILROAD GRADE CROSSINGS

§7.105. [~~Spur~~] Tracks Crossing Existing Highways.

(a) Grade crossing by [~~spur~~] rail line. Grade crossing of any highway or road by a railroad [~~spur~~] track is discouraged.

(b) Requirements for major routes. The department will allow a [~~spur~~] track crossing on an interstate highway or other major route only with initial separation of grades. The person requesting the crossing shall pay the total cost of constructing and maintaining such a grade separation.

(c) Requirements for other roadways. The department may allow a [~~spur~~] track grade crossing on a roadway, other than a roadway to which subsection (b) of this section applies, including a frontage road if technically feasible, if the department determines that the anticipated volumes of train and vehicular traffic and other pertinent factors indicate that the crossing will not be unduly hazardous to the traveling public. If a grade crossing is allowed, the person requesting the crossing shall pay all initial costs of crossing pavement, highway adjustment, and crossing warning protection, including active warning devices that the department considers appropriate for the crossing, to assure that the design and function meets applicable safety requirements. Additionally, the department may specify conditions, such as changes in conditions or volumes of vehicular or train traffic, that will require future separation of grades, at no expense to the state.